

FILED

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

NOV 6 2009


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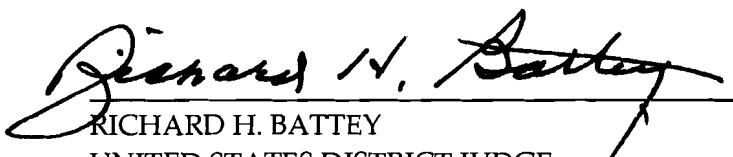
JOHN M. JUMPING EAGLE,) CIV. 09-5065-RHB
Petitioner,)
vs.) ORDER
UNITED STATES OF AMERICA,)
Respondent.)

Petitioner filed an application for writ of habeas corpus. In reviewing the application, the Court determined that the application was untimely as it was filed more than one year after the judgment of conviction became final. Petitioner filed a notice of appeal. The matter has been remanded to the Court for the limited purpose of determining whether a certificate of appealability should issue. See Tiedeman v. Benson, 122 F.3d 518 (8ht Cir. 1997).

Based upon the reasons set forth in this Court's Order dated September 10, 2009, and pursuant to Fed. R. App. P. 22(b), the Court finds that petitioner has not made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Accordingly, it is hereby ORDERED that petitioner's request for certificate of appealability is denied.

Dated this 6 ^R day of November, 2009.

BY THE COURT:


RICHARD H. BATTEY
UNITED STATES DISTRICT JUDGE